

Ms Michelle Andrews
Director General
Department of Water and Environmental
Regulation
Locked Bag 10
JOONDALUP WA 6919

Our Ref: DWERDT474741
Enquiries: Michael Christensen, 6364 6847
Email: michael.christensen@dwer.wa.gov.au

Via email: betterregulatorypractice@dwer.wa.gov.au

Dear Ms Andrews

ENVIRONMENTAL PROTECTION AUTHORITY SUBMISSION ON THE GUIDELINES FOR NATIVE VEGETATION REFERRALS

Thank you for your invitation to the Environmental Protection Authority (EPA) to comment on the Guideline: Native Vegetation Referrals (Guideline).

Western Australia's native vegetation is biologically diverse and unique at a global scale. WA is home to nearly 13,000 plant species, many of which are found nowhere else in Australia. In some areas, native vegetation is under threat from land clearing, fragmentation and degradation which challenges the natural resilience to existing pressures such as fire, floods and drought.

The passing of amendments to the *Environmental Protection Act 1986* (EP Act) has provided the Environmental Protection Authority (EPA) and the Department of Water and Environmental Regulation (DWER) with an important opportunity to implement reforms that improve regulatory processes and ensure the protection of areas with important environmental values.

One of the changes through the EP Act includes the introduction of a referral process for proposed native vegetation clearing activities (s.51DA of the amended EP Act). As outlined in the draft Guideline, the referral process has been introduced to simplify and modernise the regulation of native vegetation clearing in Western Australia and provide applicants with an option to refer their proposed clearing activity to the relevant to the CEO to make a decision on whether a clearing permit is required.

The EPA has reviewed the draft Guideline and provides the following comments and suggestions to ensure consistent alignment with existing Government policies and practices.

It is noted that the draft Guideline refers to the relationship between the referral process and proposals referred to the EPA (section 3.2). As you would be aware through s.41 of the EP Act, decision-making authorities are constrained from making decisions that could have the effect of causing or allowing a proposal to be implemented while a proposal is under assessment by the EPA. In addition, through the EP Act amendments (s.51F) this is further expanded for clearing of native vegetation, preventing the authorisation for clearing that is connected or associated with a proposal that is under assessments. Given the existing requirement and the changes to the EP Act, it is recommended that the draft Guideline is amended to include specific reference to these restrictions.

It is recommended that the guideline include encouragement to avoid and minimise proposed impacts to native vegetation before considering referral for a clearing permit. Consideration should be given to mentioning the EPA's Environmental Protection Bulletin 20: Protection of naturally vegetated areas through planning and development (note this is currently being revised) and the mitigation hierarchy.

The EPA recommends removing mention of threshold percentages in the considerations for determining the need for a permit in Table 1 of Consideration 1. The inclusion of thresholds should be avoided as they may pre-empt decisions. A key recommendation of a review on the EPA's procedure framework in 2016 (Quinlan review), was that policies which prescribe or predict outcomes should be used sparingly. If the thresholds are to be retained then they must be consistent with previously published advice i.e. the retention threshold reduced from 30% to 10% for two areas only (Perth Metropolitan Region and Greater Bunbury Region). The guideline must provide a clearer definition of constrained areas. It should also be made clear that the percentages are for the amount remaining of each vegetation type/complex and not just 'native vegetation'.

Under Consideration 1 the guideline should refer to the more detailed vegetation datasets available on Data WA (vegetation complexes for SCP (DBCA-046) or south west forest region (DBCA-047)) as well as the currently mentioned vegetation types (DPIRD-006) that applies to the rest of the state.

A more comprehensive list of significant environmental values could be included under Consideration 2, perhaps including the values listed in the EPA's Environmental Factor Guideline for flora and vegetation. It may also be possible to refer to the criteria for identifying regionally significant naturally vegetated areas (see Section 3.7 of Bush Forever 2: Directory of Bush Forever Sites or Appendix 3 of the Greater Bunbury Region Scheme).

The definition of "conservation reserve" for Consideration 2 in Table 2 should be revised to include all crown reserves with conservation stated in the reserve purpose. This is consistent with the EPA's Interim Advice on Perth and Peel and definitions agreed upon by the EPA and Department of Biodiversity, Conservation and Attractions which are used in calculating reserved areas to inform EPA assessments.

In summary the EPA is supportive of the guideline for native vegetation referrals in context of the considerations outlined in this letter. The guideline provides useful guidance on the key factors that DWER considers when assessing a proposed clearing referral and determining if a clearing permit is or is not required.

Yours sincerely



Matthew Tonts
CHAIR

3 August 2021